

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">v.</div> FERMIN IGLESIAS, <div style="text-align: right;">Defendant.</div>		Case No. 16-cr-00131-BAS-1 ORDER DENYING MOTION TO REDUCE SENTENCE (ECF No. 305)
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On February 21, 2019, the Court sentenced Mr. Iglesias to 60 months in custody. (ECF Nos. 239, 245.) On April 3, 2019, he self-surrendered to begin serving his sentence. After serving less than half of his sentence, Defendant now moves to reduce his sentence pursuant to Section 3582(c)(1)(A)(i). (ECF No. 305 (“Defendant’s Motion”).) The Government opposes (ECF No. 307 (“Government’s Opposition”)), and Defendant replies (ECF No. 312). For the reasons stated below, the Court **DENIES** Defendant’s Motion.

I. BACKGROUND

Mr. Iglesias recruited and referred workers’ compensation applicants for legal and medical services. (ECF No. 307 (Presentence Report (“PSR”)) ¶¶ 9–48.) He conspired to obtain money from the California Workers’ Compensation System (“CWCS”) by submitting claims for ancillary procedures—like MRIs and durable medical equipment—that were secured through a pattern of kickbacks and bribes. (*Id.*) He paid doctors a set

1 fee for their referrals and set up quotas for the number of referrals each doctor was to make.
2 (*Id.*) He then received kickbacks from the providers of the ancillary services. (*Id.*)

3 Although Mr. Iglesias reported that he was healthy and did “not have a history of
4 serious health problems” at the time he was interviewed for his Presentence Report (PSR
5 ¶ 87), he has been seen repeatedly for complaints of chronic sinusitis, tinnitus, and vertigo
6 during his time with the Bureau of Prisons (“BOP”) (Government’s Opposition, Exh. C).
7 The BOP has attempted to assist Mr. Iglesias with these symptoms. On August 30, 2019,
8 he had a brain MRI after prescribed medications did not help with the problems. (*Id.*) On
9 October 18, 2019, he was seen by an ENT who indicated that Mr. Iglesias’s prognosis was
10 guarded. (*Id.*) Nonetheless, on December 20, 2019, he received an ear irrigation treatment
11 (this, on top of regular medications that he was being prescribed to try to alleviate the
12 symptoms from which he was suffering). (*Id.*) On February 25, 2020, Mr. Iglesias was
13 taken outside the BOP to meet with an audiologist. (*Id.*) The audiologist recommended a
14 follow up visit in six months and an evaluation by a neurologist for an EEG. (*Id.*)
15 However, Mr. Iglesias’s medical records reflect that “during COVID-19 pandemic,
16 neurology is only providing tele-medicine services. We are unable to access this service.
17 Will cancel the consult at this time and reassess as needed.” (*Id.*) Mr. Iglesias was most
18 recently seen for this problem on December 15, 2020, when it was noted that a neurology
19 consult is still only available by telemedicine, but that the target date for a future consult is
20 March 29, 2021. (*Id.*)

21 Mr. Iglesias claims he was pre-diabetic upon self-surrender and that he has high
22 blood pressure. (*See* ECF No. 312, Exh. 1 (“Iglesias Decl.”) ¶¶ 9–10). However, his BOP
23 medical records show otherwise. (Government’s Opposition, Exh. C.) On July 18, 2019,
24 he received a full blood panel, and his blood sugar was completely normal and does not
25 indicate diabetes. (*Id.* at 215–17.) His blood sugar remained low during a test on October
26 13, 2019. (*Id.* at 184.) Additionally, his blood pressure has been consistently low, ranging
27 from 105/66 on September 26, 2019 (*id.* at 187), to 129/72 on December 18, 2019 (*id.* at
28 240). Although defense counsel is correct that there have not been any recent blood

1 pressure measurements, Mr. Iglesias was repeatedly tested throughout 2019 and the
 2 beginning of 2020, and his blood pressure was consistently low. (*Id.*) Additionally, Mr.
 3 Iglesias himself repeatedly denied to medical professionals that he had any diabetes or
 4 hypertension. (*Id.* at 42, 46, 57.) And the BOP has assessed that Mr. Iglesias “is not [part
 5 of] a high risk population for complications from COVID-19.” (*Id.* at 68, 70.)

6 Finally, although Mr. Iglesias claims that he is obese, weighing 240 pounds (Iglesias
 7 Decl. ¶ 11), again, his medical records do not support this claim. Medical records reflect
 8 a weight around 190 pounds. (Government’s Opposition, Exh. C at 54.) Admittedly, the
 9 most recent weight was taken on March 24, 2020; however, Mr. Iglesias weighed
 10 consistently 195 pounds or less for most of the time he has been in custody. (*Id.*) He
 11 provides no proof to counter the medical records and to support his claim that his weight
 12 has suddenly ballooned 50 pounds.

13 FCI Herlong, where Mr. Iglesias is being housed, indicates no inmates are currently
 14 testing positive for COVID-19 and six staff members are testing positive. *See* BOP Covid-
 15 19 Cases, <http://www.bop.gov/coronavirus> (last visited Feb. 16, 2021). No inmates or staff
 16 have died from the disease at this facility. *Id.*

17 Although the Government claims the Warden at the facility where Mr. Iglesias is
 18 being housed has never received a compassionate release request from him, Mr. Iglesias
 19 claims he wrote to the Warden both on December 17 and December 19, 2020, requesting
 20 compassionate release, and has received no response. (Iglesias Decl. ¶¶ 2–4; Defendant’s
 21 Motion Exh. D.)

22 **II. ANALYSIS**

23 **A. Exhaustion of Administrative Remedies**

24 A district court generally “may not modify a term of imprisonment once it has been
 25 imposed.” 18 U.S.C. § 3582(c); *see also* *Dillon v. United States*, 560 U.S. 817, 825–26
 26 (2010). A narrow exception, compassionate release, allows a court to reduce a sentence
 27 for “extraordinary and compelling reasons.” 18 U.S.C. § 3582(c)(1)(A)(i).

1 However, a court may only consider a defendant’s motion for compassionate release
 2 “after the defendant has fully exhausted all administrative rights to appeal a failure of the
 3 [BOP] to bring a motion on the defendant’s behalf” or “the lapse of 30 days from the receipt
 4 of such a request by the warden of the defendant’s facility, whichever is earlier.” *Id.* In
 5 other words, Mr. Iglesias must fully exhaust his administrative remedies from the warden
 6 of the facility where he is being housed before he turns to the court for relief.

7 Section 3582 provides two alternative routes to exhaustion. In the first, a petitioner
 8 files a petition, which is acted on by the Warden, and the petitioner proceeds to fully
 9 exhaust his or her administrative remedies by appealing this refusal from the Warden. In
 10 the second, the Warden takes no action, 30 days lapses and, because of the Warden’s failure
 11 to act, the petitioner may proceed without fully exhausting his or her administrative
 12 remedies.

13 Although the Government claims the Warden has never received a compassionate
 14 release request from Mr. Iglesias, Mr. Iglesias submits a declaration that he did send this
 15 request two times to the Warden at the facility where he is being housed. (Iglesias Decl.
 16 ¶¶ 2–4; Defendant’s Motion Exh. D.) Since Mr. Iglesias claims he never received a
 17 response to this request, the Court is prepared to find that he has exhausted his
 18 administrative remedies.

19 **B. Extraordinary and Compelling Circumstances**

20 If the exhaustion requirement is met, a court may modify or reduce the defendant’s
 21 term of imprisonment “after considering the factors set forth in [18 U.S.C. § 3553(a)]” if
 22 the Court finds, as relevant here, that “extraordinary and compelling reasons warrant such
 23 a reduction” and “such a reduction is consistent with applicable policy statements issued
 24 by the Sentencing Commission.” *Id.* As the movant, the defendant bears the burden to
 25 establish that he or she is eligible for a sentence reduction. *United States v. Holden*, 452
 26 F. Supp. 3d 964, 966 (D. Or. 2020).

27 First, the Court acknowledges what ought to be obvious by now: COVID-19 is
 28 posing a serious threat throughout the United States, but particularly within the BOP

1 system. Although the BOP is doing its best to keep the disease in check, the forced
2 closeness of inmates and staff and the inability to enforce social distancing standards has
3 made it difficult to keep the virus contained. However, the facility where Mr. Iglesias is
4 currently being housed does not have any inmates who are testing positive for the
5 coronavirus. And the Government provides evidence that the COVID-19 vaccine is in the
6 process of being distributed to BOP inmates.

7 Defendant claims he is entitled to compassionate release because he is at high risk
8 for complications from COVID-19 because of his: (1) untreated diabetes; (2) high blood
9 pressure; (3) extreme vertigo; (4) untreated tinnitus; (5) chronic and persistent sinus
10 blockage that interferes with his breathing and causes asthmatic symptoms; (6)
11 neurological difficulties for which he has been awaiting an EEG for over a year; and (7)
12 obesity. Defendant submits insufficient evidence supporting his claims of diabetes or high
13 blood pressure. In fact, the medical records submitted by the Government show completely
14 normal blood sugar tests, no diabetes, and regular blood pressure tests that are low.

15 Additionally, although Mr. Iglesias claims he is obese with a weight of 240 pounds,
16 he provides no evidence that supports this claim. And the medical records submitted by
17 the Government show a weight that is fifty pounds less than that claimed by Mr. Iglesias.
18 Therefore, the Court finds he has failed to meet his burden of showing that COVID-19
19 poses an increased risk to him because of any obesity.

20 What Mr. Iglesias's medical records do demonstrate is that he has struggled with
21 chronic nasal congestion, ringing in the ears, and vertigo. He has been seen repeatedly by
22 medical professionals attempting to help with these problems. His treatment has included
23 medications that attempt to deal with the symptoms, a brain MRI, ear irrigation, ENT
24 evaluations, and an outside audiology consultation. None of these interventions has
25 apparently helped. His ear canals and ear drums were intact; his brain MRI was normal.
26 And eventually, the ENT concluded that there is no specific treatment recommended, other
27 than follow up appointments and that Defendant's prognosis is guarded. It is true that the
28 outside audiologist recommended that Defendant be referred to a neurologist for an EEG.

1 However, as of July 24, 2020, his medical records reflect that “during COVID-19
2 pandemic, neurology is only providing tele medicine services. We are unable to access
3 this service. Will cancel the consult at this time and reassess as needed.” The current
4 targeted date for the neurology consult is March 29, 2021. And there is no documentation
5 that supports Defendant’s claims that his sinus blockage “interferes with his breathing and
6 causes asthmatic symptoms.”


7 The Court concludes that Mr. Iglesias is being adequately treated for his tinnitus,
8 sinusitis, and vertigo. He has also failed to provide evidence that he is at increased risk
9 were he to contract COVID-19.

10 **III. CONCLUSION**

11 Since Mr. Iglesias has failed to demonstrate that “extraordinary and compelling
12 reasons” justify his request to be released early from custody, the Court **DENIES** his
13 Motion to Reduce His Sentence. (ECF No. 305.)

14 **IT IS SO ORDERED.**

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16 **DATED: February 18, 2021**


Hon. Cynthia Bashant
United States District Judge